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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 1406

WESTWARD COACH MANUFACTURING COMPANY, INC., AND RAY GRAINGER, TRUSTEE IN BANKRUPTCY OF WESTWARD COACH MANUFACTURING COMPANY, INC.,
Petitioners,

vs.

FORD MOTOR COMPANY,
Respondent.

APPENDIX OF RESPONDENT.

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APPENDIX OF RESPONDENT.

The material herein was omitted from Petitioners' Appendix. It should have been presented so that all of the pertinent facts would be before the Court.

The material from the "affidavits" of Messrs. Barker, Galbreath, Markos, Daniels, Lybolt, Johnson, Heckaman and Baker set forth in Petitioners' Appendix pages 74-79, were really answers to an inquiry of the attorney for the Petitioners.

ABSTRACT OF ROBERT A. SPRAY AFFIDAVIT "B",

Robert Spray was the attorney for the Plaintiffs-Appellants in the trial court and this affidavit was made at the suggestion of the Defendant-Appellee to explain the source of the fifteen dealer affidavits he had submitted in opposition to the Motion for Summary Judgment.

In April, 1966, he sent an inquiry to a total of 133 dealers. (This was characterized by Judge Holder as "a most biased presentation of the case," as a "lopsided request" which produced a "minimal" return which was "wholly immaterial" to the issues of the case. Entry of July 13, 1966, R. 475.) In addition to the transmittal letter, he sent to each of those persons a document entitled "Explanation of This Inquiry" (Exhibit G to affidavit), and an additional letter of instructions (Exhibit H to affidavit), which were as follows:

Exhibit G.

Explanation of This Inquiry.

This inquiry relates merely to the use of the name "Mustang," and to factors of confusion regarding "Mustang" trailers and campers since Ford has begun to use the same name for its cars.

Since *1960,* Westward Coach and Manufacturing Company has used the name "Mustang" for its campers and trailers. About *1962,* Ford used the name "Mustang" for a display car; and in *1964,* Ford began national distribution of its "Mustang" automobile, even though back in 1962 Westward wrote Ford to ask that Ford not use the name.

(In a belittling reply, in 1962, a Ford vice-president wrote Westward to assert that Ford's use would not create any

likelihood of confusion of Westward's and Ford's products, intimating that Ford's use would be for only a "display car" rather than a mass-distribution product, and the Ford letter asserted that Ford respects legal rights of others' trademarks.)

Yet in 1964, Ford did boldly move into full-scale use of the "Mustang" name on its cars, with probably the most overwhelming advertising campaign in history.

Ford even now denies the confusion due to the joint usage, even though Westward already has obtained specific and documented evidence of confusion of various sorts, and already has affidavits as to public confusion, as at trade shows.

This inquiry, accordingly, merely seeks leads as to further examples of confusion which you may know of, from the joint usage of that same name "Mustang" on products which are as closely related as automobiles and camper and trailer recreational vehicles.

I feel that Ford must have known, at least as early as 1962, of the increasing overlapping nature of the products, at least in the mind of much of the public; and Ford *itself has contributed* to that overlapping of the fields by its sponsorship of truck-mounted camper sales, and its Econoline motorized camper vehicle promotion.

A particular, and perhaps unexpected, problem to Westward, due to the confusion caused by the joint use of the identical name "Mustang" in the close or overlapping field, is that Westward is forced to carry the burden of Ford's *reputation*, whether good or bad; and whether or not the Ford reputation is justified. (The Ford reputation, if it be a *good* reputation, to a prospective buyer of a recreational vehicle, would *not* likely benefit Westward; for the buyer would soon know that Westward "Mustangs" are not associated with Ford, and he then would perhaps

even be suspicious of Westward, on the assumption that Westward was attempting to capitalize on Ford's advertising.)

And as to trailer or camper shoppers who, for one or more reasons do *not* like Ford or Ford products, those shoppers may likely pass by Westward's recreational vehicle "Mustangs" on the same assumption as to a suspicion of Westward using a Ford-advertised name in this field, or because of an assumption that Westward's products are somehow associated with Ford. (For example, a confirmed Chevrolet owner might have a strong dislike for Ford and Ford products, and correspondingly, he might not want to consider buying a camper or trailer bearing the "Mustang" name, which he automatically associates with his prejudice or stigma against Ford products.

Moreover, before Ford's entry, Westward's products were premium quality and admittedly sold at a premium price, in contrast to Ford's "Mustangs" which are relatively low-priced, a bargain-type sports car, which tended to associate the name "Mustang" with a bargain-price product in this overall field. (Ford's widely-advertised $2368 *retail* price was approximately *wholesale* price to Westward's dealers.)

Further, Westward, as early as *1963,* had made specific plans toward a "Mustang" *motorized* or self-propelled unit. This type product seems obviously even closer to the automotive field, and with even more likelihood of confusion with "Mustang" automobiles. Ford has been expanding in the same direction, by promoting Ford's Econoline self-propelled camper vehicle.

But even considering only non-self-propelled recreational vehicles, such as campers and trailers, these products are becoming increasingly associated with the automotive field, in trade-shows, in joint dealerships, in joint promotions of various sorts, etc.

In spite of all these and other factors, Ford denies the confusion, and Ford's main answer to Westward is that Ford carefully labels its products as coming from Ford. Ford appears not to bother itself with confusion which causes the Ford reputation and price-reputation problems to Westward. Thus, we would appreciate further leads as to specific examples of confusion, reputation-carryover, etc.

Please fill out and sign the enclosed blank page (or more preferably your own letterhead), inserting in your own words whatever comments you feel are appropriate. (Actually, for our purpose, it is much better to have your comments notarized as true and under oath, if at all convenient.) Please send this to me within *a week;* and please enclose your charge for your notary fee for prompt reimbursement.

Thanking you in advance for your courteous attention, I am,

Sincerely,

ROBERT A. SPRAY,
Attorney.

Exhibit H.

On the attached sheet, please give comments in your own words, whatever is true and appropriate, as to any confusion and questions as to a Ford relationship of "Mustang" trailers and campers.

Also, comment as to a closeness or overlapping nature of camper and trailer recreational vehicles with the automotive industry in joint promotion, joint dealerships, motorized units, etc; closeness of the overall field in the mind of the public; likelihood and effects of reputation-carryover and price-assumptions; difficulty of Westward maintaining, as dealers, those who also deal in non-Ford auto-

motive products; likelihood that many persons think Ford expanded its product line to pick-up campers and trailers; any confusion mentioned to you by Ford representatives; and indicate whether your comments would be even stronger if Westward were to make a "Mustang" self-propelled vehicle.

Please be as specific as possible, giving examples and details; and please sign the sheet, preferably having it Notarized as true and under oath. Please return it to me within a week. Thanks.

ROBERT A. SPRAY.

One of the responses attached to that affidavit which has not been duplicated by the Appellants, was as follows:

April 25, 1966

To Whom It May Concern:

In reference to comparison between Ford and their sports car "Mustang"—and the Mustang travel trailer, I see no confusion. One is strictly a recreational vehicle and the other is automotive.

I see no reason for such a "fuss" and we are a franchise dealer for Mustang, and, also, we are "Ford family" for the past 40 years, having a fleet of Ford vehicles in our agricultural interest and trailer business and etc. The "Mustang" airplane was built first. Why don't they file suit too?

I say "drop the whole thing".

TREES' TRAILER SALES,
Signed EVERETT E. TREES.

Dated April 25, 1966.

RUTH E. TREES,
Notary Public for Hancock Co., Indiana.
My Commission expires Aug. 20, 1966.

AFFIDAVIT OF ELBERT D. (REX) COX, JR.

Significant portions of the affidavit were omitted. They are:

Being first duly sworn, upon my oath I depose and say that:

1. I am the Executive Director of Indiana Mobile Home Association, 3738 W. Michigan Street, Indianapolis, Indiana, which is the largest trade association in Indiana involving recreational vehicles including campers and travel trailers; and I have a broad background in the recreational vehicle business, and am and have been personally familiar with many of its operations and developments for several years.

• • • • •

14. I think of the Ford "Mustang" automobile whenever I hear the name "Mustang," probably because of the over-whelming nature of Ford's "Mustang" publicity; even though by background and occupation I am vocationally involved with campers and travel trailers, and even though I am quite familiar with the "Mustang" campers and travel trailers of Westward.

15. In contrast to Comment 14, I do not think of the Buick Company when I hear the name "Century", nor do I necessarily think of either specific one of an automobile or a trailer product when I hear other trademarks used by both automobile companies and trailer product manufacturers. The difference between this comment and Comment 14 is due to the overwhelmingness of the Ford "Mustang" publicity, and to the fact that in these other cases the manufacturer more strongly and continuously mentions his own name. That is, for example, when you hear of a Buick Century, the word "Century" is more like a particular model of a Buick; in contrast, the "Mustang" of Ford is much more commonly regarded as a

"Mustang". with relatively less emphasis on its Ford source, both in common-speech references by the public and in Ford's advertising. In other words, with other cars, the maker's name is more dominant, for example, a Buick Century, a Ford Galaxy; while a "Mustang" of Ford is a "Mustang" which happens to have Ford as its source. In contrast to the others, the emphasis in "Mustang" references and advertising is on "Mustang" rather than Ford; and this has been probably a significant key to the success of the Ford "Mustang" even though most people know it is a Ford product.

27-28. Reliable statistics disclose the following sales:

	1960	1961	1962	1963	1964
Truck mounted campers	—	23,703	37,524	50,740	67,889
Travel trailers	52,524	52,487	72,704	97,570	117,814

Sales in 1965 in both categories increased about 11% over 1964.

29d. Probably 800, that is over 10%, of the 6848 dealers in new campers or trailers in the 50 states and North America, also sell automobiles and/or trucks in addition to trailer and/or camper products. . . .

• • • • •

34. The leaflet "The Mobile Home and Recreational Vehicle Industry in Indiana," which is blue, gold and white, is accurate and substantially current in its brief description of the mobile home and recreational vehicle industry in Indiana, and for our trade association.

• • • • •

OMITTED TESTIMONY OF ENOCHS.

E. Edward Enochs, the president of Westward, presented twenty-three affidavits on the Summary Motion. (App. 14-17.) Portions of eighteen of these are quoted in Petitioners' Appendix. (App. 79-81, 83-87.) The deposition of Enochs was taken by respondent Ford. Enochs also testified under oath in the bankruptcy proceedings where

Ford's representatives were not present. Significant portions of the deposition and of the bankruptcy testimony are in conflict with these later day affidavits. Some of the deposition and bankruptcy material is set forth, as well as one omitted affidavit.

Omitted Deposition Testimony.

(Unnumbered Exhibit.)

This witness was the president of Petitioner Westward Coach at the time the suit was commenced. The following testimony was given (numbers in parentheses refer to deposition page numbers):

The Plaintiff built only three mobile homes. This was in 1962. The reason was that the Elkhart Mobile Home Show did not want to exhibit travel trailers at the show, and in order that I could have a display I built these units at that time. (24-26)

In addition to the name Mustang I have used the names Palomino and Stallion. Both names were used for the low-priced units, the economy models. I also built a Chevrolet camper, which I called the Pinto. (28-29)

I have only an Indiana trademark registration. I have applied for a federal registration, but this has been opposed by the White Motor Company. (35-36) We used the White Motor Company hood ornament to apply to my product until just recently. This had their name on it. I "found out to get a die, that cost from $5,000 to $10,000 or better just to get a die made up. And I was sold on the idea of using their (White Motor's) Mustang." This was a five or six inch horse, with the name across the rump, and I put it on the front end of the trailer, and on the truck camper. In addition to this horse, we would use a plastic depiction of a leaping horse or decals. The White Motor Company horse was a facsimile of a real horse in a standing or rearing position and he has his legs up like he is fighting and his tail is touching the ground. The

position of my horse is different from the position of the horse used by the Ford Motor Company, which is in a running position. (47-57)

Appellants state in their abstract (App. 83) that the witness testified that 1965 sales should have been $2,000,000. They neglect to state that the witness said "this is an assumption." (70)

After we had quadrupled our prior production capacity in 1963-64, we could produce 15 to 20 units a day. However, this is not my projection, my goal, because that is a little far out. The actual maximum production in the two factories, the two buildings, had been about five a day, assorted trailers and campers. (77-78)

Other companies that have used the name Mustang have been Chateau Manufacturing "out of Arkansas." They used it at a Texas show. I called my attorney. Chateau quit using it. Champion Home Builders of Dryden, Michigan, also used it on a mobile home. Another occasion it was used in California on a pickup camper. They quit using the name. It has also recently been used by Divco Wayne. We saw a display in the Mobile Home Dealer. There was a Mustang Mobile Homes in Florida, a retail lot, two of them at different locations. (152-62)

In a Popular Mechanics magazine printed in November, 1962, when I first discovered Ford built a "bomb" which they called Mustang the magazine had quoted: "According to Ford executives, there are no plans to mass produce Mustang at present. The car's future depends on the public reaction." (200)

We also used the name Colt on some units beginning back in 1961, but we didn't use it too long, perhaps a year. (247).

A trailer that is of comparable price and quality to mine is Holiday Rambler. I know that they cannot produce enough units. "They build something like 3,000 a year up to now, is my understanding. . . ." This is general knowledge within the industry. (257-58)

To my knowledge there aren't any campers that are more expensive than mine. In some cases it would be one hundred or two hundred dollars more wholesale than the retail price of other campers. In the trailer field, wood trailers, I don't think anybody has quite the price as I do. Air Stream and Streamline are of a different type structure, they use aluminum studding and are aireraft riveted. (63-65)

After considerable discussion of a number of instances in which members of the public indicated they were under the impression that Plaintiff was a part of the Ford Motor Company (118-45)—and in response to which Plaintiff occasionally responded "that's one of our subsidiaries" (120)—Enochs was asked whether it was not the fact that no one had ever asked him whether he built the Ford Mustang automobile. (174) Mr. Enochs said that this was not the fact, that with some research and remembering he could say who did it. The deposition accordingly was adjourned to allow Plaintiff time to review his records and come up with that recollection. When the deposition resumed he said that he had been asked the question, but he could not remember a single specific instance. (176-77) It was apparent that what the witness was saying was that some people, thinking he was associated with the Ford Motor Company, so indicated that fact—and Mr. Enochs occasionally buttressed that impression by referring to the Ford Motor Company as "one of our subsidiaries."

Omitted Testimony in Bankruptcy Proceedings.

(Exhibit 319.)

(References in parentheses are to page numbers of this exhibit.)

Mr. Enochs, Petitioner Westward's president, stated that the contributing factors that brought about the financial difficulty of the corporation were "labor problems, my

prices were low, and lack of production, and pilferage." (6) He stated that the corporation had ceased operations on an active basis around the first of September, 1965, that the corporation had had to pay off bank notes which fell due and which would not be renewed, which drained the corporation's operating capital and left it without liquid funds. (12-13) With respect to his individual claim against the corporation of between $7,200.00 and $7,500.00 which he relinquished in consideration for the assignment of a percentage of the proceeds of any recovery in this litigation, he stated that most of it was where he wouldn't draw salary, wouldn't take his check, or would just leave the cash in the company. (14-15)

With respect to this law suit, in answering a question as to the advice he had received from counsel as to his chances of success, he replied that "actually, most counsel sort of pass it off as a joke. They feel there is a very slim chance of anything." (31) He conceded that if the proposed reorganization were consummated, the complete understanding was any trade name or rights to the name "Mustang" are, and will remain those of the corporation, and he would not retain any interest or right to use the name "Mustang." (34)

Omitted Testimony in E. Edward Enochs' Affidavit "Q".

Omitted from Petitioners' statement is the fact that a brochure attached of Petitioner Westward's products after the bankruptcy reorganization shows that all models bear the name "Mustang" and that other names theretofore used are no longer used on the models in the brochure.

OMITTED TESTIMONY IN ABSTRACT OF FRANK RIZZO DEPOSITION.

(Unnumbered Exhibit)

(Numbers in parentheses refer to deposition page numbers.)

Mr. Rizzo had been Sales Manager of the Plaintiff since August, 1964. (1) Prior to that he had been associated with another trailer manufacturer, Barth Corporation, in sales. (32) He had been in the selling business nearly all his life, having served as a Director in the Bureau of Internal Congress, Director of Marketing for Philco and for R. C. A. Whirlpool. (32, 33)

At a trailer show in Cleveland, Ohio, he had met a Mr. Harry Williams of the Ford Company. Mr. Williams showed Mr. Rizzo a brochure prepared by Ford which showed colored pictures of various trailer manufacturers. Mr. Rizzo complained that Ford had everybody else in there and not Westward Coach. Williams stated that Ford had never received any material from Mr. Enochs, and that was why they didn't. Rizzo then suggested this was a good chance to run a promotion to boost the Plaintiff's sales and they discussed having a Mustang automobile pull a Mustang trailer. Williams thought that was a good idea and suggested that a Ford representative from Indianapolis see if he could work out something on it with Mr. Rizzo. (29, 30)

Rizzo thought this was a good idea, it would help to pick up some dealers and boost sales. He thought it was a good promotion which would help the sale of the Mustang trailers. (30, 31)

After this, Rizzo received a call from the Indiana Truck Sales Manager for Ford, a Mr. J. R. Slough. Mr. Slough said that he had talked to Mr. Williams about this, and with

the local Ford dealer in Elkhart, and the joint promotion had been cleared. All Ford needed was the itinerary which the automobile-trailer caravan would take. Rizzo mailed an itinerary to Ford. However, after Rizzo talked to Mr. Enochs about it and told Enochs he was going to hire a salesman for this purpose, Enochs told him to hold off on that, to do nothing about it. As a result, the matter was dropped by Westward. (20-29)

Appellants' summary of some of this witness' testimony regarding 1964 and 1965 sales (App. 20) is somewhat ambiguous, and implies that those sales were in fact "a couple of million dollars." This was not the witness' testimony. He stated that when he joined Westward Coach it had recently expanded and its production facilities were three or four times more than they had previously been. He then said "if everything would have got right, I mean that we had got our sales, we could have hit that goal," *i.e.* a couple of million dollars in sales which was the forecast based upon the increase in production facilities. (56-57)

OTHER MATERIALS.

The balance of the materials in this Appendix is pertinent to the statement of the material facts and the opinion of the Circuit Court of Appeals which is challenged in the Petition for the Writ of Certiorari.

DEFENDANT'S INTERROGATORIES AND PLAINTIFF'S ANSWERS THERETO.

Type and Quantity of Products Sold by Plaintiff Westward or Its Predecessor.

By its answers to interrogatories numbered 1, 5 and 6, Plaintiff disclosed that its total sales of products under the "Mustang" name were of the type and in the quantities as follows:

	Total	1960	1961	1962	1963	1964	1965
a. Detachable Pickup Campers	443	20	107	121	86	64	45
b. Chassis-Mounted Pickup Campers	11	0	0	2	5	2	2
c. Travel Trailer	409	0	0	2	79	89	239
d. Mobile Homes	1	0	0	0	0	1	0
e. Office Trailers	1	0	0	1	0	0	0
Totals	865	20	107	126	170	156	286

These were scattered throughout the country, with little concentration in any particular state for any particular year:

	Total	1960	1961	1962	1963	1964	1965
California	1	0	0	0	0	0	1
Colorado	5	0	0	0	0	0	5
Connecticut	6	0	0	0	0	2	4
Delaware	17	0	11	3	0	2	1
Florida	15	0	9	3	0	2	1
Georgia	4	0	0	0	1	0	3
Indiana	127	13	11	16	28	25	34
Illinois	84	0	14	18	22	7	23
Iowa	21	0	4	0	1	10	6
Kansas	6	0	3	2	0	0	1
Kentucky	2	0	0	0	2	0	0
Louisiana	3	0	0	1	0	0	2
Maine	3	0	3	0	0	0	0
Maryland	19	0	3	0	3	9	4
Massachusetts	40	0	0	0	31	5	4
Michigan	106	3	17	27	25	12	22
Minnesota	68	0	9	26	10	8	15
Missouri	10	0	7	1	0	2	0
Montana	2	0	0	1	0	1	0
Nebraska	11	0	0	1	5	2	3
New Hampshire	12	0	0	0	0	12	0
New Jersey	15	0	3	1	5	3	3
New York	78	1	1	3	8	15	40
North Carolina	4	0	0	0	0	2	2
Ohio	83	2	3	8	22	15	33
Oregon	3	0	0	0	0	0	3
Pennsylvania	71	1	15	17	9	12	17
Tennessee	8	0	0	0	0	0	8
Texas	8	0	0	1	2	0	5
Virginia	22	0	0	0	2	1	19
West Virginia	17	0	0	0	0	8	9
Washington	3	0	0	0	0	0	3
Wisconsin	16	0	3	1	3	2	7
Foreign	1	0	0	0	0	0	1
Total	891	20	116	130	179	157	279

During this same period Plaintiff was selling campers and travel trailers under other names as well, such as Sport Colt, Palomino, Pinto and Stud. Its total sales of all units of all types and under all names during this period was 1,234 units, about evenly divided between travel trailers and pickup campers.

Defendant's Interrogatory No. 11.

State all other uses of the term and designation "Mustang" and of the representation of a horse, alone and in combination, for any product or service of which the Plaintiff has knowledge or of which the Plaintiff has been informed by anyone, and as to each such use, state the following:

(a) The name and address of the person, firm, corporation, partnership or other entity or organization using such designation.

(b) The product or products and service or services upon or in connection with which such mark or designation is used.

(c) The earliest date of such use known to the Plaintiff, or of which the Plaintiff has been advised, whether or not the Plaintiff has verified such information.

(d) The date the Plaintiff learned of such use.

(e) The action taken by the Plaintiff, if any, upon learning of such use.

Plaintiff's Answer to Defendant's Interrogatory Number 11.

11. (This Response No. 11 is supplemented by Responses 12 and 14, which, to avoid repetition, are not included in this Response No. 11.)

Plaintiff learned of the assertion of various uses by the Defendant's Requests to Admit Nos. 14, 28 and 29, which

Requests were served on Plaintiff on October 11, 1965, said asserted usages being incorporated herein by reference to avoid repetition. Plaintiff has not verified such uses. Plaintiff learned of assertions of use as to certain of these by Plaintiff's searches which are detailed in Response No. 14. No action was taken as to any of such uses, except as indicated in Response No. 12.

Defendant's Interrogatory No. 12.

As to any use of the term "Mustang" or of the representation of a horse, alone or in combination, by any other person, firm, partnership, corporation, association or legal entity or organization, on or in connection with any product, state whether the Plaintiff has made a demand or request that such use be discontinued or modified, or whether the Plaintiff has asserted that such use infringes any mark of the Plaintiff, and, if so, state the following:

(a) The name and address of the other party.

(b) The product or service sold or offered for sale, or in connection with which such party was using such term or mark or representation.

(c) The date Plaintiff learned of such use.

(d) The date Plaintiff made its demand or request or assertion of infringement.

(e) Whether such demand or request or assertion was oral or in writing.

(i) If in writing, state the date thereof, the person who executed such on behalf of the Plaintiff, the person to whom such was addressed, whether Plaintiff has a copy thereof, and the name and address of the person having possession and custody of such copy.

(ii) If such demand or request or assertion was oral, state the date thereof, the place where such was made, the name and address of each person who was present, and the statements made by each person present at such time.

(iii) If in writing, the response, if any, made by such party to such demand or request or assertion, the date thereof, and whether the Plaintiff has a copy; if such response was oral, the place where it was made and the names and addresses of all persons present.

(iv) As to each other related written communication, give the dates thereof, the name and address of the sender, the name and address of the addressee, whether Plaintiff has a copy thereof, and the name and address of the person having possession and custody thereof.

(v) As to each other oral communication, state the date and place thereof and the name and address of each person present.

(f) Whether such use by such party continues at the present time.

(g) Whether the Plaintiff has commenced an action to enjoin such use or to collect damages by reason thereof; and, if so, identify the court in which such action is pending, the date on which it was filed, and the manner in which it is designated.

Plaintiff's Answer to Defendant's Interrogatory Number 12.

12. Plaintiff has made demands and/or taken action as hereinafter specified, relating to the following uses of the term "mustang" or of a representation of a horse:

A. The Ford Motor Company. (The present litigation. The balance of the answer is omitted.)

B. Mustang Mobile Homes, 3312 Phillips Highway, Jacksonville, Florida. (Balance of answer shows notification but no response to notice.)

C. Chateau Manufacturing Company, of Jacksonville, Arkansas. (Balance of answer omitted, shows notification but no response.)

D. B. M. B. Coach Manufacturing Company, P. O. Box 518, Perris, California. (Balance of answer shows notification and advice of no further use.)

E. Divco-Wayne Industries, 680 5th Avenue, New York, New York. (Balance of answer shows notification and advice of no further use.)

F. Champion Home Builders Co., Dryden, Michigan. (Balance of answer shows notification, filing of suit by Westward, and no resolution of suit.)

Defendant's Interrogatory No. 14.

Describe in detail all investigations made by or on behalf of the Plaintiff prior to its adoption and use of the term and designation "Mustang" and the representation of a horse, alone or in combination, and as to each such investigation, state the date thereof, the person or persons making such investigation, whether a written report was made, and, if so, whether the Plaintiff has a copy thereof; and, if Plaintiff does have such a copy, state the name and address of the person having possession and custody thereof. If no written report was made, state the results of such investigation. Supply the same information as to any subsequent investigations.

Plaintiff's Answer to Defendant's Interrogatory No. 14.

14. Prior to Plaintiff adoption of the mark "Mustang" and the representation of a leaping horse, Plaintiff made no formal Trade-mark searches, but Plaintiff's President had investigated the use of the name, in the sense that he was confident that the Trade-marks were not being used in the trailer industry, as a result of his extensive experience in that industry since the year 1954, his experience in said industry having taken him throughout many portions of

the United States. Subsequent to said adoption by Plaintiff, formal Trade-mark searches were made as follows:

A Trade-mark search was made on or about January 9, 1963, by Thomson and Thomson, 80 Federal Street, Boston 10, Mass.; a supplemental search was made by said firm on or about November 30, 1964; a follow-up search report was made on March 9, 1965, by said firm. A copy of each of said reports are in the possession of Robert A. Spray, Plaintiff's Attorney.

Defendant's Interrogatory No. 17.

State the information upon which Plaintiff formed the belief alleged in rhetorical paragraph 9 of its complaint that "the Defendant had used said marks with intent to appropriate said marks to its own use and benefit," and state the name and address of each party known to the Plaintiff to have knowledge of any facts related or pertinent to such information and belief or to have information which might lead to the discovery of such relevant information.

Plaintiff's Answer to Defendant's Interrogatory No. 17.

17. The appropriation and use of the marks by the Defendant is open and notorious, and is of a widespread nature throughout the United States, and has been admitted by the Defendant. Plaintiff believes that such use by the Defendant, subsequent to a warning by the Plaintiff to the Defendant, indicates that such use by Defendant is with an intent to appropriate the mark to the use and benefit of the Defendant.

Defendant's Interrogatory No. 33.

If the Defendant's Request to Admit No. 22 is not unqualifiedly admitted upon the date of the preparation of the answers to these interrogatories, state the name and

address of each person who had such belief and of each person who Plaintiff had been informed has such belief.

Defendant's Interrogatory No. 34.

If the Defendant's Request to Admit No. 23 is not unqualifiedly admitted upon the date of the preparation of the answers to these interrogatories, state each instance when any such statement or representation or implication was made, the date thereof, the name and address of the person by whom it was made and the person to whom it was made, including not only all instances of which the Plaintiff has knowledge, but all instances of which the Plaintiff has in any manner been informed or advised. As to each such statement, representation or implication made orally, state the place where made, the name and address of each person present, and what was said by each party present at such time. As to each such statement, representation or implication which was in writing, state whether the Plaintiff has a copy of the same, the name and address of anyone known to Plaintiff who has a copy of the same, and, in any event, the name and address of the person having possession, custody and control of any such copy.

Defendant's Interrogatory No. 35.

If Defendant's Request to Admit No. 24 is not unqualifiedly admitted upon the date of the preparation of the answers to these interrogatories, state the name and address of each person who has been so confused or deceived, or that the Plaintiff has been informed has experienced such confusion or deception.

Plaintiff's Answer to Defendant's
Interrogatories Numbered 33, 34, and 35.

(Requests to Admit 22-24 are set forth at pages 37-38 of this Appendix. Each referred to the absence of any confusion as to the manufacturer of the Ford "Mustang" automobile. The Exhibits mentioned in the Answer refer to Enochs' Deposition Exhibit Numbers.)

33, 34, and 35. People who have indicated such a belief are as follows: Miss Kathleen L. Pettit, of Concord, Mobile Homes Inc., Elkhart, Indiana; who wrote Plaintiff on January 5, 1965, saying in part, "I mistook Mustang Traveler Co., for Mustang automobiles." and, "there has obviously been some mistake." Mr. LeRoy Clark, 602 Country Club Rd., Urbana, Illinois, who wrote Plaintiff on a letter received by Plaintiff on June 2, 1964 (Defendant's Exhibit No. 14), inquiring about a seat for Ford truck. Others who have expressed confusion as to their belief as to a tie-in of Plaintiff with Ford, even though not necessarily as to Plaintiff being the builder of the Ford "Mustang" are: Records Motors (Defendant's Exhibit 5) who thought Plaintiff was a Ford dealer; L. B. Smith of Pennsylvania, Concrete Pipe (Defendant's Exhibit 6) thought that Plaintiff was associated with Ford Motor Company; Mrs. Records of Records Mobile Home and Trailer Court (Defendant's Exhibit No. 7) thought Plaintiff was a Ford Dealer; Frank Newcomer, President of Fan Coach Company (Defendant's Exhibit No. 10) referred to Plaintiff's trailer as a Ford "Mustang." In referring to Plaintiff's display at Trade Shows, fairly common were inquiries, such as, "Is this a Ford display?", such inquiries having been heard on many occasions by the Plaintiff's President, and by his wife. On one occasion an inquirer at a trade show asked the wife of the Plaintiff's President, "Does your company also build a Ford truck to go with this 'Mustang'

camper?'' On many occasions, such as at trade shows, Plaintiff has heard confusion expressed as to the various factors of confusion of the public, resulting from Ford's use of the trade-mark ''Mustang'' which had already been adopted by Plaintiff as its own trade-mark.

Defendant's Interrogatory No. 49.

Name all of the competitors of Plaintiff, or any predecessor of Plaintiff, during the years 1955 to 1965, separately as to each type of product manufactured or sold by the Plaintiff, or any predecessor of Plaintiff, identified in response to Interrogatory No. 1. As to each competitor so named, state whether each competitive product is of ''high grade and superior quality,'' or, if of some other grade or quality, how Plaintiff would characterize the grade and quality of each type of product of each competitor named in response to the first portion of this interrogatory. Also, name each competitor who has, or during the above period has had, a price equal to or higher than the Plaintiff's, or any predecessor of Plaintiff's, price on the competitive type and model.

Plaintiff's Answer to Defendant's Interrogatory No. 49.

Plaintiff responded in substance that it had a multitude of competitors and that a partial listing in 1965 occupied 70 pages of a trade journal.

Defendant's Interrogatory No. 50.

Set forth in detail the nature and amount of damages which Plaintiff claims to have incurred to date and the manner in which such damages were computed, showing separately as to each item of damage, the amount thereof, the manner in which such damage has been caused by the

actions of the Defendant, the documents or other tangible things upon which the Plaintiff relies in making such claim and such computation, and the names and addresses of all persons having knowledge of any matter with respect thereto. Supply the same information with respect to all other damages which Plaintiff claims a right to recover in this action.

Plaintiff's Answer to Defendant's Interrogatory No. 50.

Plaintiff in part of the answer to the interrogatory stated that it sold 56 "Mustang" units during the first three months of 1964.

Defendant's Interrogatory No. 66.

State the name and address of every person known to Plaintiff to have purchased a product of the Plaintiff bearing the name "MUSTANG" who believed or thought that it was produced by the Defendant, and give in each case the name of the person or persons to whom such belief or thought was communicated.

Plaintiff's Answer to Defendant's Interrogatory No. 66.

66. Plaintiff has no knowledge of anyone who purchased of Plaintiff thinking it was produced by the Defendant; and according to Plaintiff's belief, those persons who thought that Plaintiff's products are produced by the Defendant are persons who have *not* purchased a product of the Plaintiff.

Defendant's Interrogatory No. 67.

State the name and address of every person known to Plaintiff to have purchased a product of the Defendant bearing the name "MUSTANG" who believed or thought

that it was produced by the Plaintiff, and give in each case the name of the person or persons to whom such belief or thought was communicated.

Plaintiff's Answer to Defendant's Interrogatory No. 67.

67. Plaintiff has no knowledge of any such person.

DEFENDANT'S REQUESTS TO ADMIT AND PLAINTIFF'S RESPONSES THERETO.

(For the Court's convenience, each pertinent Request is followed by the applicable Response. There have been deleted those portions of the Responses which the District Court, by its entry of December 9, 1965, ordered Stricken. (R. 44.) Appropriate record references cannot be given since these were treated as Exhibits and were neither bound nor paged.)

Request to Admit No. 1.

"MUSTANG" was not coined or invented by Plaintiff.

Plaintiff's Response.

1. Admits No. 1.

Request to Admit No. 2.

"MUSTANG" is not a distinctive or novel word.

Plaintiff's Response.

2. Admits that the word "Mustang" is not a novel word, in the sense that the word is neither new or coined or invented by the Plaintiff; admits that the word "Mustang" is not distinctive in the sense that the word is not a coined word; but denies that the word "Mustang" is

not distinctive in the sense of serving a Trade-mark function of associating goods with a manufacturer.

Request to Admit No. 3.

"MUSTANG" was derived from an old Spanish word, "mestengo," an adjective meaning "wild, having no conqueror, said of horses and cattle."

Plaintiff's Response.

3. Admits No. 3.

Request to Admit No. 4.

"MUSTANG" is a noun found in dictionaries in common use for over one hundred and fifty years to identify the wild or half-wild horses of the southwest United States and Mexico descended from the stock introduced by the Spanish conquistadores.

Plaintiff's Response.

4. Admits No. 4.

Request to Admit No. 5.

"MUSTANG" from the time of the Civil War, has been used to identify an officer who rose from the enlisted ranks in the United States Navy.

Plaintiff's Response.

5. Admits No. 5.

Request to Admit No. 6.

"MUSTANG" was the name of a famous attack plane of the Navy of the United States during World War II.

Plaintiff's Response.

6. Admits No. 6.

Request to Admit No. 7.

Athletic teams of Southern Methodist University have for many years prior to 1960 been known nationally as "MUSTANGS."

Plaintiff's Response.

7. Admits No. 7.

Request to Admit No. 8.

The Plaintiff has no registration of the term or designation "MUSTANG" or of a representation of a horse, alone or in combination, except such registration as may have been obtained under the applicable provisions of the laws of the State of Indiana.

Plaintiff's Response.

8. Admits No. 8.

Request to Admit No. 9.

The Plaintiff did not adopt or use, prior to September, 1960, the term and designation "MUSTANG" or the representation of a horse, alone or in combination, as a trademark for any product.

Plaintiff's Response.

9. Admits No. 9.

Request to Admit No. 10.

The Plaintiff has not adopted or used the term and designation "MUSTANG" or the representation of a horse, alone or in combination, as a trademark for any products except traveler or camper trailers, coach or utility bodies mountable on small trucks and commonly known as "pickup campers," and three mobile homes.

Plaintiff's Response.

As the stated products are defined in "Request to Admit No. 35," the Plaintiff admits No. 10. However, as pointed out in more detail in Plaintiff's response No. 35, Plaintiff denies the accuracy of the definitions stated for the various products, and thus Plaintiff limits its admission No. 10 accordingly. (Request to Admit No. 35 defined these products as follows: In the industry in which Plaintiff is engaged, the various products are classified for statistical and other purposes and such classes generally may be described as follows:

(a) *Mobile Homes*—over 30 feet in length, primarily used for housing not travel, semi-permanently located, and transported generally by special tow trucks.

(b) *Travel Trailers*—under 30 feet in length, normally used for travel, camping and recreation, towed generally by a passenger car.

(c) *Truck Campers*—sometimes called a pick-up camper or pick-up coach, mounted in the bed of a pick-up truck or chassis-mounted coach permanently mounted upon a pick-up chassis instead of temporarily on the bed, and generally used as (b) above.)

Request to Admit No. 11.

It has been a common practice of many years standing for manufacturers of mobile homes, travel trailers and campers to adopt names used by automotive companies on their trucks and passenger cars, and also for automotive companies to adopt names for trucks and passenger cars used by manufacturers of mobile homes, travel trailers and campers.

Request to Admit No. 12.

Examples of the common practice stated in the foregoing Request to Admit No. 11 are shown by the brand names used by manufacturers taken from the Ninth Annual Directory of Mobile Homes, Travel Trailers, Campers, Services and Products, issued November 5, 1964, and United States Patent Office records. In the first column under each name appears the name of the manufacturer or manufacturers of mobile homes, travel trailers or campers using such name taken from the directory, and in the second column the corresponding manufacturer of automobiles or trucks which uses, has used or has registered the name. Where the name is registered in the United States Patent Office, the fact is indicated by (Reg.) after the manufacturer.

APACHE

Honorbilt Trailer Mfg. Co. 19940 Hanson Avenue Lakeview, California	General Motors Corp. (Reg.)
Maverick Mobile Home Corporation 3616 E. Admiral Place Tulsa, Oklahoma	
Vesely Company (Reg.) 2101 N. Lapeer Road Lapeer, Michigan	

BEL-AIRE

Belvedere Mobile Homes — General Motors Corp.
111 Belvedere Road
Elkhart, Indiana

BISCAYNE

Nellej of Florida, Inc. — General Motors Corp. (Reg.)
Post Office Box 1296
Oneco, Florida

Skyline Homes, Inc.
2520 By-Pass Road
Elkhart, Indiana

CAPRI

Buddy Mobile Homes — Ford Motor Company (Reg.)
(Div. of Skyline Homes, Inc.)
1601 W. Bristol Street
Elkhart, Indiana

Yellowstone, Inc.
2400 W. Mishawaka Road
Elkhart, Indiana

CARDINAL

Adams Trailer Mfg. — Ford Motor Company (Reg.)
11310 Stewart
El Monte, California

CENTURY

20th Century Mobile Homes Ltd. — General Motors Corp.
Box 72
London, Ontario, Canada

Henslee Mobile Homes, Inc.
2410 W. Division
Arlington, Texas

Larado Mobile Homes, Inc.
Post Office Box 923
Lamar, Colorado

CITATION

Continental Mfg. Co., Inc. — Ford Motor Company
2211 W. Eighth
Loveland, Colorado

20th Century Mobile Homes Ltd.
Box 72
London, Ontario, Canada

COLONY PARK

Buddy Mobile Homes, Inc. — Ford Motor Company, (Reg.)
(Div. of Skyline Homes, Inc.)
1601 W. Bristol Street
Elkhart, Indiana

COMMANDER

Glendale Mobile Homes, Ltd. — Studebaker Mfg. Corp. (Reg.)
145 Queen Street
Strathroy, Ontario, Canada

Honorbilt Trailer Mfg. Co.
19940 Hanson Avenue
Lakeview, California

Marlette Coach Company
3305 Wilson Street
Marlette, Michigan

McCoy Mfg. & Sales Co.
400 E. Iowa
Indianola, Iowa

CONESTOGA

Concord Mobile Homes, Inc. — Studebaker Mfg. Corp. (Reg.)
Rt. #19, South
Elkhart, Indiana

CONTINENTAL

Covered Wagon Trailer Mfg., Inc. — Ford Motor Company (Reg.)
Post Office Box 170
Elkhart, Indiana

Marshfield Homes, Inc.
2301 East 4th Street
Marshfield, Wisconsin

Trade Winds Campers, Inc.
1211-1231 Depot Street
Manawa, Wisconsin

CORONET

Taylor Mobile Homes — Chrysler Corporation
110 Leslie Street
Troy, North Carolina

COUNTRY SQUIRE

Homette Corporation — Ford Motor Company (Reg.)
(Div. of Skyline Homes, Inc.)
2825 Middlebury Street
Elkhart, Indiana

Marshfield Homes, Inc.
2301 East 4th Street
Marshfield, Wisconsin

CRUISER

Driftwood Homes Corp. — Ford Motor Company
Rural Route #2, County Rd. #6
Elkhart, Indiana — Studebaker Mfg. Corp.

CUTLASS

Hillcrest Homes — General Motors Corp.
(Div. of Skyline Homes, Inc.)
2421 S. 17th Street
Elkhart, Indiana

DART

Arrow Trailers, Inc. — Chrysler Corporation (Reg.)
Lincoln & Merriam
Nappanee, Indiana

Zipper, Inc.
900 S. Broad Street
Clinton, South Carolina

DIPLOMAT

Vagabond Division
(Div. of Guerdon Industries, Inc.)
17600 West 8 Mile Road
Southfield, Michigan

American Motors Corporation

ECONOLINE

Krager Kustom Koach, Inc.
9 SW 4th Street
Osseo, Minnesota

Ford Motor Company

ELDORADO

Honorbilt Trailer Mfg. Co., Inc.
Box 157
Minneapolis, Kansas

General Motors Corp.

Kropf Manufacturing Co., Inc.
Post Office Box 514
Goshen, Indiana

ELECTRA

Henslee Mobile Homes, Inc.
2410 W. Division
Arlington, Texas

General Motors Corp.

FAIRLANE

Consolidated Mobile Ind. Corp.
777 West 190th Street
Gardena, California

Ford Motor Company (Reg.)

FALCON

Azalea Homes
212 S. Livingston Street
Clinton, South Carolina

Ford Motor Company (Reg.)

Comet Construction Co.
Box 857
Coffeyville, Kansas

Shipp-ette Mobile Homes, Inc.
1851½ Independence Avenue
Waterloo, Iowa

Rimer, Inc. (Reg.)
Clinton, South Carolina

Western Coach Corp.
Box 905
Phoenix, Arizona

FURY

Driftwood Homes Corp. — Chrysler Corporation
Rural Route #2, County Road #6
Elkhart, Indiana

Zipper, Inc.
900 S. Broad Street
Clinton, South Carolina

GALAXIE

El Dorado Mfg. Co. — Ford Motor Company (Reg.)
15420 Fraser Highway
North Surrey, British Columbia, Can.

GREENBRIAR

Skyline Homes, Inc. — General Motors Corp. (Reg.)
2520 By-Pass Road
Elkhart, Indiana

HOLIDAY

Avion Coach Corp. — General Motors Corp.
1300 E. Empire Avenue
Benton Harbor, Michigan

Easy Travler Trailer Co.
Post Office Box 170
Elkhart, Indiana

Rocket Trailers Ltd.
6925 103rd Street
Edmonton, Alberta, Canada

Standard Coach Co.
371 West Union Street
Nanticoke, Pennsylvania

IMPERIAL

Avion Coach Corp. — Chrysler Corporation (Reg.)
1300 E. Empire Avenue
Benton Harbor, Michigan

Covered Wagon Trailer Mfg., Inc.
Post Office Box 170
Elkhart, Indiana

Stanley N. Lewis (Reg.)
Gardena, California

Pacemaker Mobile Homes (Lonergan)
1810 W. Lusher Avenue
Elkhart, Indiana

Starlite Mfg. Co.
10835 Fremont
Ontario, California

Taylor Mobile Homes
110 Leslie Street
Troy, North Carolina

Western Coach Corp.
Box 905
Phoenix, Arizona

Mobile of Marysville, Inc.

INTERNATIONAL

Airstream, Inc. — International Harvester Company
Jackson Center, Ohio

Covered Wagon Trailer Mfg., Inc.
Post Office Box 170
Elkhart, Indiana

INTERNATIONAL SCOUT

Gad-About Trailers
Fairview, Michigan

International Harvester Company

LANDCRUISER

DeVille Industries, Inc.
Route #4
Elkhart, Indiana

Studebaker Mfg. Corp.

Jeep

LARK

Foremost Mobile Home Mfg. Corp.
Post Office Box 430
Denton, Texas

Herzig Manufacturing Co.
West 23rd
Fremont, Nebraska

Studebaker Mfg. Corp. (Reg.)

MATADOR

Siesta Products, Inc.
3127 Maple Drive, N. E.
Atlanta, Georgia

Chrysler Corporation

METEOR

Fireball Trailer Mfg., Inc.
10125 Wystone Street
Northridge, California

Santa Fe Springs Division
(Divco-Wayne Ind., Inc.)
13538 Excelsior Drive
Santa Fe Springs, California

Ford Motor Company (Reg.)

METRO

Redman Industries, Inc.
(New Moon Homes)
7800 Carpenter Freeway
Dallas, Texas

International Harvester Company

MONTEREY

Sportcraft Trailer Mfg. Co. — Ford Motor Company (Reg.)

MONTCLAIR

Montclair Mobile Homes, Inc. (Reg.) — Ford Motor Company (Reg.)
1333 Bon View Avenue
Ontario, California

Richardson Homes Corp. (Reg.)
2421 S. Nappanee Street
Elkhart, Indiana

MUSTANG

Westward Coach Mfg. Co., Inc. — Ford Motor Company
726 Middleton Run Road
Elkhart, Indiana

PACER

Lonergan Corp. — Ford Motor Company
1810 W. Lusher Avenue
Elkhart, Indiana

PARKLANE

Belvedere Mobile Homes — Ford Motor Company (Reg.)
111 Belvedere Road
Elkhart, Indiana

PONTIAC

Detroiter Mobile Homes, Inc. — General Motors Corporation (Reg.)
1517 Virginia Street
St. Louis, Michigan

RAMBLER

Klinger Products Corp. — American Motors Corp. (Reg.)
Wakarusa, Indiana

Trade Winds Campers, Inc.
1211-1231 Depot Street
Manawa, Wisconsin

RANCHERO

Vought Industries, Inc. (Reg.)
Texarkana, Texas — Ford Motor Company (Reg.)

RANGER

Forly Engineering Co.
921 Cedar Avenue
Minneapolis, Minnesota — Ford Motor Company (Reg.)

Prior Products, Inc. (Reg.)
Dallas, Texas

Ritz-Craft, Inc.
Argos, Indiana

Trotwood Trailers, Inc.
11 North Broadway
Trotwood, Ohio

Comet Mobilhomes
Box 857
Coffeyville, Kansas

REBEL

The Adventure Line Mfg. Co., Inc.
339 Main Street
Parsons, Kansas — American Motors Corp.

ROCKET

All State Trailer Co., Inc.
Post Office Box 337, Warehouse Row
Jacksonville, Arkansas — General Motors Corp.

Fireball Trailer Mfg., Inc.
10125 Wystone Street
Northridge, California

Silver Streak Trailer Co.
2319 North Chico Avenue
El Monte, California

SAFARI

Roadway Trailers Ltd. General Motors Corp.
6925 103rd Street
Edmonton, Alberta, Canada

Coons Custom Mfg., Inc.

SEVILLE

Sportcraft Trailer Mfg. Co., Inc. General Motors Corp.

SKYLARK

E-Z Kamper, Inc. General Motors Corp.
Loyal, Wisconsin

Skyline Homes, Inc.
2520 By-Pass Road
Elkhart, Indiana

STARFIRE

Driftwood Homes Corp. General Motors Corp.
R. R. #2, County Road #6
Elkhart, Indiana

SUBURBAN

Trotwood Trailers, Inc. Chrysler Corporation
11 North Broadway
Trotwood, Ohio

TEMPEST

Northwestern Mobile Homes General Motors Corp. (Reg.)
(Div. of Rainway Mfg. Co.)
Box 248
Veradale, Washington

THUNDERBIRD

Driftwood Homes Corp. Ford Motor Company (Reg.)
R. R. #2, County Rd. #6
Elkhart, Indiana

E-Z Kamper, Inc.
Loyal, Wisconsin

VILLAGER

Frontier Homes Corp.
110 North 24th Street
Omaha, Nebraska

Ford Motor Company (Reg.)

Pathfinder Mobile Home, Inc.
Box 117
Spencer, Wisconsin

VOYAGER

Alair Coach Corporation
Post Office Box 216
Baroda, Michigan

Ford Motor Company

Request to Admit No. 13.

Set forth below are registrations in the United States Patent Office of the same or similar names for automobiles or trucks on the one hand and mobile homes, travel trailers or campers on the other, together with the application number, registration number, date of application and registration and publication in the Official Gazette and the name of the registrant.

APACHE

Vesly Mfg. Co.
Lapeer, Michigan
For: Camp trailers and parts
*SN: 51,088 F: May 5, 1958
RN: 673,431 R: Feb. 3, 1959
Use: July 1, 1957
O. G. Nov. 18, 1958

General Motors Corporation
Detroit, Michigan
For: Trucks
SN: 29,058 F: Apr. 29, 1957
RN: 655,742 R: Dec. 17, 1957
Use: Apr. 3, 1957
O. G. Oct. 1, 1957

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* SN—serial number of application
RN—registration number
F—date of filing of application
R—date of issuance of registration
O. G.—date of publication in the Official Gazette

FALCON

Rimer, Inc.
Clinton, South Carolina
For: Mobile Homes
SN: 214,287 F: Mar. 16, 1965
Rn: _____ R: _____
Use: Nov. 1, 1964

Ford Motor Company
Dearborn, Michigan
For: Automobiles
SN: 67,054 F: Feb. 4, 1959
RN: 688,639 R: Nov. 24, 1959
Use: Jan. 23, 1959
O. G. Sept. 8, 1959

IMPERIAL

Stanley N. Lewis
Gardena, California
For: House trailers
SN: 94,782 F: Apr. 11, 1960
RN: 721,243 R: Sept. 12, 1961
Use: Mar. 11, 1957
O. G. June 27, 1961

Chrysler Corporation
Detroit, Michigan
For: Auto and parts
SN: 283,553 F: May 6, 1929
RN: 271,219 R: May 27, 1930
Use: Oct. 27, 1928

MONTCLAIR

Montclair Mobile Homes, Inc.
Montclair, California
For: Mobile residences
SN: 101,454
RN: 712,433

Ford Motor Company
Dearborn, Michigan
For: Automobiles
SN: 24,954 F: Feb. 25, 1957
RN: 652,312 R: Oct. 1, 1957

RANCHERO

Vought Industries, Inc.
Texarkana, Texas
For: Mobile homes
SN: 93,886 F: Mar. 28, 1960
RN: 709,562 R: Jan. 10, 1961
Use: Apr. 19, 1956
O. G. Oct. 25, 1960

Ford Motor Company
Dearborn, Michigan
For: Automobiles
SN: 24,152 F: Feb. 11, 1957
RN: 651,672 R: Sept. 17, 1957
Use: Jan. 18, 1957
O. G. July 2, 1957

RANGER

Prior Products, Inc.
Dallas, Texas
For: Farm wagons and trailers
SN: 658,138 F: Dec. 17, 1953
RN: 610,578 R: Aug. 16, 1955
Use: March, 1948

Ford Motor Company
Dearborn, Michigan
For: Automobiles
SN: 16,205 F: Sept. 24, 1956
RN: 647,733 R: July 2, 1957
Use:
O. G. Feb. 19, 1957

Plaintiff's Response.

11, 12, 13. Is without knowledge of the duration of time involved in the subject matter of Request No. 11 and 12, and thus denies in Request No. 11 that the practice is of "many years standing"; Is without knowledge as to whether in Request No. 11 and 12 the first user was an automobile company or a trailer company, and thus denies the request to the extent it implies which was the first user. Except as hereinabove indicated, Plaintiff admits Requests No. 11, 12 and 13, as set forth.

Request to Admit No. 14.

(Westward admitted that following Ford's use of "Mustang" it was adopted as a tradename or corporate name by many firms and that in July 1965 there were at least thirty-one such businesses.)

Request to Admit No. 15.

The representation of a horse appearing upon the forepart of the mobile home units manufactured or sold by Plaintiff and designated "MUSTANG" were originally manufactured for or by White Motor Company.

Plaintiff's Response.

15. Admits Request No. 15, except that prior to the White representations there was a short period when Plaintiff used its own decals. The usage of the White representations by Plaintiff was discontinued in early 1965. During the period of usage by Plaintiff of the White representations, Plaintiff also used other representations, as set forth in response to Request No. 17.

Request to Admit No. 21.

The Plaintiff has never manufactured automobiles or trucks, it has made no studies with respect to the entry

into the business of manufacturing automobiles and trucks, and it has no plans to enter into the business of manufacturing automobiles and trucks.

Plaintiff's Response.

21. Admits it has never manufactured automobiles or trucks; admits it has made no studies with respect thereto except as relate to motorized or self-propelled units providing living quarters; denies making no studies to the extent that such a motorized unit would be for certain purposes considered to be an automobile or truck; admits that it has no present plans to enter into the business of manufacture of automobiles and trucks, except to such motorized units.

Request to Admit No. 22.

The Plaintiff knows of no person, firm, partnership, corporation, association, or other legal entity or organization who believes that the "MUSTANG" automobile manufactured and sold by the Defendant was a product which had been manufactured by the Plaintiff.

Plaintiff's Response.

22. Admits the allegations of Request No. 21 to the extent it refers to specific entities by name, other than that already disclosed to Defendant at the prior oral deposition by Ford of Plaintiff's officers.

Request to Admit No. 23.

The Plaintiff knows of no instance when any representative of the Defendant, or anyone else, ever stated or represented or implied that the "MUSTANG" automobile manufactured and sold by the Defendant had, in fact, been manufactured by or originated with the Plaintiff.

Plaintiff's Response.

23. Admits it has no knowledge of any such instance.

Request to Admit No. 24.

The plaintiff knows of no person, firm, partnership, corporation, association, or other legal entity or organization who has been confused or deceived as to the source of origin of the "MUSTANG" automobile manufactured and sold by the Defendant.

Plaintiff's Response.

24. Plaintiff incorporates its response No. 22, in entirety, as response to this Request No. 24.

Request to Admit No. 33.

Plaintiff in the past has used and then abandoned use of the tradenames "Colt," "Palomino," "Pinto," and "Stallion."

Plaintiff's Response.

33. Admits Request No. 33.

Request to Admit No. 34.

The prominent display of the word "MUSTANG" and the display of a representation of a rearing horse by White Motor Company on the hoods of motor vehicles sold by it does not infringe any rights claimed by the Plaintiff to the use of the word "MUSTANG" or of the representation of a horse.

Plaintiff's Response.

34. Admits Request No. 34.

ABSTRACT OF PATENT OFFICE FILE WRAPPER OF WESTWARD'S APPLICATION FOR FEDERAL TRADEMARK REGISTRATION.

(Exhibit 314.)

(References in parentheses are to page numbers of this exhibit.)

On October 22, 1962, Westward filed in the United States Patent Office an application to register the mark "Mustang (and illustration)" designating the goods upon which it had been used as "utility coaches, vans, vehicle-carried accomodation (sic) for campers or travelers." (3)

Following an examination of the application, the examiner advised Westward as follows (10):

> "The identification of goods is indefinite. The goods should be more clearly identified. It is suggested that common descriptive terms used in the trade be substituted for the present identification. If the utility coaches are house trailers it is suggested that it be so stated. If the vans are motor trucks with van bodies, it is suggested that it be so stated. If the vehicle-carried accommodation for campers or travelers are camper bodies for pickup trucks or small trucks, it is suggested that it be so stated."

Westward thereafter filed an amended declaration of goods on September 10, 1963, as follows (11):

> "camper bodies for pick-up trucks or small trucks, truck campers, and travel trailers."

On October 9, 1963, the hearing examiner again responded to Westward (14) that "It is still believed that the terms 'utility coaches' and 'vans' are indefinite. The goods referred to by these terms should be more clearly identified." By a subsequent amendment filed April 8, 1964 (15), Plain-

tiff said that the Patent Office should "cancel the identification of the goods and change to:

> —utility van bodies mountable on pick-up trucks and small trucks for providing trailer-type housing and storage accommodations for travellers and sportsmen, coach bodies known as campers for providing such accommodation and mountable on an associated vehicle or carrying unit such as a truck or boat unit, such as a pontoon frame, and trailers—."

The Patent Office ultimately published the mark on November 24, 1964 (32). On December 23, 1964, the White Motor Company filed an opposition to Westward's registration in which it stated that since December, 1951, it had used the mark "Mustang" for "internal combustion piston type engines for heavy-duty automotive trucks and transport tractors" and had been granted a federal trademark registration on October 21, 1958. It further stated that it had used the trademark "Mustang" and a pictorial representation of a horse" as the name for its executive dining room at its head office in Cleveland, Ohio. Finally, it stated that "since at least as early as 1939" it had "continually associated horses with its products" as evidenced by two specified registrations (63-65). (This first opposition was unverified, and a verified opposition substantially identical in terms was filed on January 22, 1965 (67-80).)

By its answer filed March 17, 1965, in paragraph three thereof, Westward stated as follows (82-83):

> "As to rhetorical paragraph 3 of said Notice, Applicant denies a confusing similarity of Applicant's mark with respect to Opposer's mark, considering: (a) There are significant differences in the nature of Opposer's engine (an accessory of a vehicle, engines being the only product of Opposer on which the Opposer's mark Mustang is used as a trademark) from Applicant's mobile homes and campers; (b) There are

significant differences in the nature of the buyers of the engine of Opposer and Applicants' mobile homes and campers; (c) The nature of distribution is significantly different for the engines of Opposer and the mobile homes and campers of Applicant; (d) There is a difference in Patent Office classification of Opposer's engines (Class 23) and Applicant's mobile homes and campers (Class 19); (e) Opposer's engines are used in larger assemblies, in contrast to Applicant's mobile homes and campers which are sold and used as an ultimate product; (f) In the long period in which Opposer and Applicant have used the Mustang mark on their respective products, no confusion has been heard of by Applicant; (g) In the long period in which Opposer and Applicant have used the Mustang mark on their respective products, no confusion has been heretofore asserted by Opposer; (h) If actual confusion would occur, it would have occurred before now, both Opposer's and Applicant's use having been quite widespread, with respect to geographical area, length of time, and widespread advertising, yet none has apparently occurred; . . ."

In response to the contention of the Opposer that a registration granted to Westward "will constitute a continued threat to Opposer insofar as its free use of the words, MUSTANG, is concerned" (69) Westward responded as follows (86):

"Applicant denies rhetorical paragraph 10 of said Notice. Applicant has recognized and hereby affirms its recognition of Opposer's free use of the trademark Mustang (and closely similar words, and a horse) to products for which Opposer used such mark prior to Applicant's entry into the field, and to any other products for which Opposer uses the mark prior to use by Applicant on such other marks. And as to products on which Applicant has first use relative to Opposer, including specifically the goods to which this application specifically relates, the 'continued threat to opposer' is wholly theoretical for Opposer does not (to

the best of Applicant's knowledge) use the mark on such products; and if Opposer has begun or will begin to use the mark on these goods, the 'threat' is Applicant's prior use (well recognized at common law as the basis of the right) rather than the registration here sought. Accordingly, the Opposer will not be damaged by the registration here sought; for by the registration the Opposer will not lose any rights which it would otherwise have. . . ."

Before accepting the application for registration and the publication of the filing thereof, the Patent Office had refused registration because the mark claimed so resembled a registration of the mark "Mustang" by "Mustang Trailer Company" for "trailers, truck trailers, and parts therefor." (10) Westward conducted an investigation, the result of which was to indicate that the Mustang Trailer Company was no longer in business. Nevertheless, publication was refused until Westward had proceeded to obtain cancellation of that registration (11-59).

An agreement was entered into between White and Westward concerning White's opposition, reading as follows:

"AGREEMENT.

This Agreement entered into by and between Westward Coach Manufacturing Company, Inc., an Indiana corporation, having an office and place of business in Elkhart, Indiana, hereinafter referred to as WESTWARD, and White Motor Corporation, a corporation of the State of Ohio, having its principal office and place of business at 100 Erieview Plaza, Cleveland, Ohio, hereinafter referred to as WHITE:

WHEREAS, WESTWARD is the applicant in United States Trademark application Serial No. 158,116 for the trademark MUSTANG & DES. which application was published for opposition at page TM 171 of the *Official Gazette* of November 24, 1964;

WHEREAS, WHITE instituted Opposition No. 44,753 against the granting of such registration; and,

WHEREAS, the parties wish to adjust their differences and dispose of such opposition amicably;

NOW, THEREFORE, it is agreed as follows:

1. Promptly after the execution of this Agreement, the attorneys for the parties will execute on behalf of the parties, a Stipulated Motion dismissing the opposition with prejudice and cause such stipulated motion to be filed in the United States Patent Office.

2. WHITE hereby covenants not to sue WESTWARD for trademark infringement for use of the trademark MUSTANG and or a pictorial representation of a horse so long as WESTWARD limits its use of such trademark and/or representation in the manner set out in paragraphs 3-5 below.

3. WESTWARD hereby agrees to forthwith discontinue the use of MUSTANG emblems obtained from WHITE whether or not they include the trademark WHITE.

4. WESTWARD agrees to and forthwith will cease to use the trademark WHITE and/or a pictorial representation of a horse identical to or confusingly similar with pictorial representation of a horse used by WHITE as set forth in the appendices to the above-identified opposition.

5. WESTWARD agrees it will not commence to manufacture and sell, under the trademark MUSTANG any product which is apt to be, in the eyes of the purchasing public, confusingly similar as to source or origin with any product of WHITE.

6. In the event that the parties cannot agree as to some possible future product of WESTWARD, that such future product is not confusingly similar with a product of WHITE, the matter will be submitted to arbitration by the American Arbitration Association in accordance with the rules of said Association, and the parties agree to be bound by the results of such arbitration."

(Request to Admit, United States District Court for the Southern District of Indiana, Cause No. 65-C-199.)

On July 5, 1967, pursuant to prior stipulation, the opposition of White was dismissed with prejudice. (Request to Admit, United States District Court for the Southern District of Indiana, Cause No. 65-C-199.)

On September 5, 1967, the name "Mustang" with the depiction of a horse was registered on the Principal Register in the United States Patent Office in Westward's name for trailers and campers.

AFFIDAVIT OF ROBERT J. FISHER.

(Exhibit 315.)

(Caption omitted.)

Robert J. Fisher, being sworn upon his oath deposes and says that:

(1) He is Advertising Manager for the Ford Division of Ford Motor Company, Defendant in the above-entitled cause, and hereinafter referred to as Defendant, and has been employed by Defendant in various positions in its advertising operations for more than ten years and is responsible for all advertising of said Division, and as such Manager he is familiar with matters herein set forth.

(2) Defendant has its principal place of business at Dearborn, in the State of Michigan and is engaged in the production and sale of automobiles, trucks and other products, and was so engaged at all times referred to herein.

(3) Said Ford Division is responsible for advertising and selling all of Defendant's Ford car and truck products, including the Ford Mustang car.

(4) Defendant has since long prior to the commencement of this action produced and continues to produce automobiles under the primary names of FORD, MERCURY and LINCOLN. It distinguishes models of these automobiles, one from another, with such secondary names as GALAXIE, FAIRLANE and FALCON.

(5) Defendant on October 7, 1962 introduced an experimental display model bearing the name MUSTANG.

(6) Defendant on April 17, 1964 introduced the Ford Mustang production model to the public and continues to sell such models to its authorized dealers who resell them to the public.

(7) The Defendant has extensively advertised the Ford Mustang model. The amount of advertising expenditures for the Mustang model alone from the time of the announcement through September 31, 1965, exceeded 16 million dollars. The detail of expenditures by media of the aforesaid expenditures are set forth in Exhibit A attached hereto. All of such advertising has prominently displayed or used the name FORD or FORD MOTOR COMPANY in such a fashion as to make it clear that the car was a product of Defendant. Typical newspaper and magazine advertising of Defendant's Mustang are attached hereto and marked Exhibit B-1 to 66.

(8) In addition to the advertising referred to in 7 above, Defendant advertised the Mustang car as one of Ford's family of fine cars in association with its other cars and trucks. Such advertising has been extensive but since several other models have been featured in such advertisements, there is no way to allocate accurately the portion properly attributable to the Mustang. All such advertising featured the name FORD or FORD MOTOR COMPANY.

(9) In addition to the advertising referred to in 6 above, dealers of Defendant have extensively advertised the Ford Mustang model through local radio, television, newspapers, billboards and other media. The cost of such advertising during the period the Mustang car has been on the market is estimated to be several millions of dollars. Such advertising has prominently featured the name FORD or FORD MOTOR COMPANY. Examples of such

advertising are set forth in Exhibits C-1 to 84 attached hereto and made a part hereof.

(10) Many suppliers of products to Defendant have run advertisements in many media advertising the Mustang and the fact that the advertising company supplies parts or material for the car. Examples of such advertising are set forth in Exhibits D-1 to 6 attached hereto and made a part hereof. (The example ads were by General Tire, DuPont, Fram, Alcoa, Johns-Manville and Trailer Tram.)

(11) Manufacturers of other products have used Mustang cars as prizes for contests or for tie-in advertising. Examples of such advertising are set forth in Exhibits E-1 to 17 attached hereto and made a part hereof. (Among others were ads of Purina, Ken-L-Ration, Hermes, Dobbs Hats, Minute Rice, Cudahy Meats, Listerine, Dr. Pepper, Roblee Shoes, Hudson's, General Electric, DX and Longine Watches.)

(12) Many products associated with the MUSTANG name were advertised, offered for sale or trademark registrations obtained for them by others prior to Defendant's use of the name. Among others, are the following products:

Trucks manufactured by Mitsubishi in Japan; automobiles in England; marine engines; trucks by Maudsley of England; trailers; fabrics; fish bait; men's trousers; pistols and revolvers; asbestos siding; lariats and lariat rope; wheat flour (foreign); fresh vegetables; storage batteries, cranes (truck mountable); brake linings; tires; springs (automobile); motorcycles; tractors; mufflers; engines (automobile and truck); simulated leather (plastic); fireworks; footballs; basketballs; soccer balls; engines (motorcycle); handsaws; socket wrenches; and aircraft.

(13) In addition, many products associated with the MUSTANG name have been advertised, offered for sale or trademark registrations obtained for them by others since

Defendant's use of the name. Among others are the following:

After-shave tonics; arc welders; bags; basketballs; bath talc; bluejeans; camp kits; carpet; chap stick; cough syrup; derricks; electric knives; enamel; fishing tackle; flour; garden tillers; gloves; hair tonic; hats; homes; horns (automobile); jewelry; junior powered cars; lariats; leather goods; luggage; mobile homes; moccasins; outboard motor boats; paint; paper; pickles; picnic coolers; pre-shave lotion; radio and television antennae; rifles; sailboats; saws; shoes; slacks; small gasoline engines; sports jackets; steel; stud drivers; sunglasses; sweatshirts; tennis rackets; tents; toys; vinyl flooring; water skis; snow mobiles.

(14) Defendant does not manufacture or market a motor home, mobile home, trailer or camper and he has no knowledge of any plans for it to do so.

(15) It is common practice for automobile manufacturers and manufacturers of mobile homes and travel trailers to use the same names for their products. Some of these names appearing in advertisement, trade directories, Patent Office registrations and otherwise are:

APACHE

Honorbilt Trailer Mfg. Co.
19940 Hanson Avenue
Lakeview, California

General Motors Corp. (Reg.)*

Maverick Mobile Home Corporation
3616 E. Admiral Place
Tulsa, Oklahoma

Vesely Company (Reg.)
2101 N. Lapeer Road
Lapeer, Michigan

BEL-AIRE

Belvedere Mobile Homes
111 Belvedere Road
Elkhart, Indiana

General Motors Corp.

* "(Reg.)" indicates a registered Federal trademark.

BISCAYNE

Nellej of Florida, Inc. — General Motors Corp. (Reg.)
P. O. Box 1296
Oneco, Florida

Skyline Homes, Inc.
2520 By-Pass Road
Elkhart, Indiana

CAPRI

Buddy Mobile Homes — Ford Motor Company (Reg.)
(Div. of Skyline Homes, Inc.)
1601 W. Bristol Street
Elkhart, Indiana

Yellowstone, Inc.
2400 W. Mishawaka Road
Elkhart, Indiana

CARDINAL

Adams Trailer Mfg. — Ford Motor Company (Reg.)
11310 Stewart
El Monte, California

CENTURY

20th Century Mobile Homes Ltd. — General Motors Corp.
Box 72
London, Ontario, Canada

Henslee Mobile Homes, Inc.
2410 W. Division
Arlington, Texas

Larado Mobile Homes, Inc.
Post Office Box 923
Lamar, Colorado

CITATION

Continental Mfg. Co., Inc. — Ford Motor Company
2211 W. Eighth
Loveland, Colorado

20th Century Mobile Homes Ltd.
Box 72
London, Ontario, Canada

COLONY PARK

Buddy Mobile Homes, Inc. Ford Motor Company (Reg.)
(Div. of Skyline Homes, Inc.)
1601 W. Bristol Street
Elkhart, Indiana

COMMANDER

Glendale Mobile Homes, Ltd Studebaker Mfg. Corp. (Reg.)
145 Queen Street
Strathroy, Ontario, Canada

Honorbilt Trailer Mfg. Co.
19940 Hanson Avenue
Lakeview, California

Marlette Coach Company
3305 Wilson Street
Marlette, Michigan

McCoy Mfg. & Sales Co.
400 E. Iowa
Indianola, Iowa

CONESTOGA

Concord Mobile Homes, Inc. Studebaker Mfg. Corp. (Reg.)
Rt. #19, South
Elkhart, Indiana

CONTINENTAL

Covered Wagon Trailer Mfg., Inc. Ford Motor Co. (Reg.)
Post Office Box 170
Elkhart, Indiana

Marshfield Homes, Inc.
2301 East 4th Street
Marshfield, Wisconsin.

Trade Winds Campers, Inc.
1211-1231 Depot Street
Manawa, Wisconsin

CORONET

Taylor Mobile Homes Chrysler Corporation
110 Leslie Street
Troy, North Carolina

COUNTRY SQUIRE

Homette Corporation — Ford Motor Company (Reg.)
(Div. of Skyline Homes, Inc.)
2825 Middlebury Street
Elkhart, Indiana

Marshfield Homes, Inc.
2301 East 4th Street
Marshfield, Wisconsin

CRUISER

Driftwood Homes Corp. — Ford Motor Company
Rural Route #2, County Rd. #6
Elkhart, Indiana — Studebaker Mfg. Corp.

CUTLASS

Hillcrest Homes — General Motors Corp.
(Div. of Skyline Homes, Inc.)
2421 S. 17th Street
Elkhart, Indiana

DART

Arrow Trailers, Inc. — Chrysler Corp. (Reg)
Lincoln & Merriam
Nappanee, Indiana

Zipper, Inc.
900 S. Broad Street
Clinton, South Carolina

DIPLOMAT

Vagabond Division — American Motors Corp.
(Div. of Guerdon Industries, Inc.)
17600 West 8 Mile Road
Southfield, Michigan

ECONOLINE

Krager Kustom Koach, Inc. — Ford Motor Company
9 SW 4th Street
Osseo, Minnesota

ELDORADO

Honorbilt Trailer Mfg. Co., Inc. — General Motors Corp.
Box 157
Minneapolis, Kansas

Kropf Manufacturing Co., Inc.
Post Office Box 514
Goshen, Indiana

ELECTRA

Henslee Mobile Homes, Inc. — General Motors Corp.
2410 W. Division
Arlington, Texas

FAIRLANE

Consolidated Mobile Ind. Corp. — Ford Motor Co. (Reg.)
777 West 190th Street
Gardena, California

FALCON

Azalea Homes — Ford Motor Co. (Reg)
212 S. Livingston Street
Clinton, South Carolina

Comet Construction Co.
Box 857
Coffeyville, Kansas

Shipp-ette Mobile Homes, Inc.
1851½ Independence Avenue
Waterloo, Iowa

Rimer, Inc. (Reg)
Clinton, South Carolina

Western Coach Corp.
Box 905
Phoenix, Arizona

FURY

Driftwood Homes Corp. — Chrysler Corporation
Rural Route #2, County Road #6
Elkhart, Indiana

Zipper, Inc.
900 S. Broad Street
Clinton, South Carolina

GALAXIE

El Dorado Mfg. Co. — Ford Motor Company (Reg)
15420 Fraser Highway
North Surrey, British Columbia, Can.

GREENBRIAR

Skyline Homes, Inc. — General Motors Corp. (Reg)
2520 By-Pass Road
Elkhart, Indiana

HOLIDAY

Avion Coach Corp. — General Motors Corp.
1300 E. Empire Avenue
Benton Harbor, Michigan

Easy Traveler Trailer Co.
Post Office Box 170
Elkhart, Indiana

Rocket Trailers Ltd.
6925 103rd Street
Edmonton, Alberta, Canada

Standard Coach Co.
371 West Union Street
Nanticoke, Pennsylvania

IMPERIAL

Avion Coach Corp. — Chrysler Corp. (Reg)
1300 E. Empire Avenue
Benton Harbor, Michigan

Covered Wagon Trailer Mfg., Inc.
Post Office Box 170
Elkhart, Indiana

Stanley N. Lewis (Reg)
Gardena, California

Pacemaker Mobile Homes (Lonergan)
1810 W. Lusher Avenue
Elkhart, Indiana

Starlite Mfg. Co.
10835 Fremont
Ontario, California

Taylor Mobile Homes
110 Leslie Street
Troy, North Carolina

Western Coach Corp.
Box 905
Phoenix, Arizona

Mobile of Marysville, Inc.

INTERNATIONAL

Airstream, Inc.
Jackson Center, Ohio

International Harvester Company

Covered Wagon Trailer Mfg., Inc.
Post Office Box 170
Elkhart, Indiana

INTERNATIONAL SCOUT

Gad-About Trailers
Fairview, Michigan

International Harvester Co.

LANDCRUISER

DeVille Industries, Inc.
Route #4
Elkhart, Indiana

Studebaker Mfg. Corp.

Jeep

LARK

Foremost Mobile Home Mfg. Corp.
Post Office Box 430
Denton, Texas

Studebaker Mfg. Corp. (Reg)

MATADOR

Siesta Products, Inc.
3127 Maple Drive, N.E.
Atlanta, Georgia

Chrysler Corporation

METEOR

Fireball Trailer Mfg., Inc. — Ford Motor Co. (Reg)
10125 Wystone Street
Northridge, California

Santa Fe Springs Division
(Divco-Wayne Ind., Inc.)
13538 Excelsior Drive
Santa Fe Springs, California

METRO

Redman Industries, Inc. — International Harvester Company
(New Moon Homes)
7800 Carpenter Freeway
Dallas, Texas

MONTEREY

Sportcraft Trailer Mfg. Co. — Ford Motor Company (Reg)

MONTCLAIR

Montclair Mobile Homes, Inc. — Ford Motor Company (Reg)
(Reg)
1333 Bon View Avenue
Ontario, California

Richardson Homes Corp. (Reg)
2421 S. Nappanee Street
Elkhart, Indiana

MUSTANG

Westward Coach Mfg. Co., Inc. — Ford Motor Company
726 Middleton Run Road
Elkhart, Indiana

PACER

Lonergan Corp. — Ford Motor Company
1810 W. Lusher Avenue
Elkhart, Indiana

PARKLANE

Belvedere Mobile Homes — Ford Motor Company (Reg)
111 Belvedere Road
Elkhart, Indiana

PONTIAC

Detroiter Mobile Homes, Inc. — General Motors Corp. (Reg)
1517 Virginia Street
St. Louis, Michigan

RAMBLER

Klinger Products Corp. — American Motors Corp. (Reg)
Wakarusa, Indiana

Trade Winds Campers, Inc.
1211-1231 Depot Street
Manawa, Wisconsin

RANCHERO

Vought Industries, Inc. (Reg) — Ford Motor Company (Reg)
Texarkana, Texas

RANGER

Forlyn Engineering Co. — Ford Motor Company (Reg)
921 Cedar Avenue
Minneapolis, Minnesota

Prior Products, Inc. (Reg)
Dallas, Texas

Ritz-Craft, Inc.
Argos, Indiana

Trotwood Trailers, Inc.
11 North Broadway
Trotwood, Ohio

Comet Mobilhomes
Box 857
Coffeyville, Kansas

REBEL

The Adventure Line Mfg. Co. Inc. — American Motors Corp.
339 Main Street
Parsons, Kansas

ROCKET

All State Trailer Co., Inc.
P. O. Box 337, Warehouse Row
Jacksonville, Arkansas — General Motors Corp.

Fireball Trailer Mfg., Inc.
10125 Wystone Street
Northridge, California

Silver Streak Trailer Co.
2319 North Chico Avenue
El Monte, California

SAFARI

Roadway Trailers Ltd.
6925 103rd Street
Edmonton, Alberta, Canada — General Motors Corp.

Coons Custom Mfg., Inc.

SEVILLE

Sportcraft Trailer Mfg. Co., Inc. — General Motors Corp.

SKYLARK

EZ-Kamper, Inc.
Loyal, Wisconsin — General Motors Corp.

Skyline Homes, Inc.
2520 By-Pass Road
Elkhart, Indiana

STARFIRE

Driftwood Homes Corp.
R.R. #2, County Road #6
Elkhart, Indiana — General Motors Corp.

SUBURBAN

Trotwood Trailers, Inc.
11 North Broadway
Trotwood, Ohio — Chrysler Corporation

TEMPEST

Northwestern Mobile Homes (Div. of Rainway Mfg. Co.)
Box 248
Veradale, Washington — General Motors Corp. (Reg)

THUNDERBIRD

Driftwood Homes Corp.
R.R. #2, County Road #6
Elkhart, Indiana

E-Z Kamper, Inc.
Loyal, Wisconsin — Ford Motor Co. (Reg)

VILLAGER

Frontier Homes Corp.
110 North 24th Street
Omaha, Nebraska

Pathfinder Mobile Home, Inc.
Box 117
Spencer, Wisconsin — Ford Motor Co. (Reg)

VOYAGER

Alair Coach Corporation
Post Office Box 216
Baroda, Michigan — Ford Motor Company

(16) The emblem of a rearing horse has been used by Ferrari and Porsche for many years in connection with the advertising and sale of their automobiles in the United States and other parts of the world. The emblems, as so used, are set forth in Exhibits G-1 and 2. The emblem of a horse has been used on many products and is registered as a part of hundreds of trademarks.

(17) The name FORD appears prominently upon all Mustang models on the front, rear and interior of such car, see Exhibits F-1 to F-3 attached hereto and made a part hereof.

ROBERT J. FISHER.

(Jurat omitted.)

Examples of supplier's ads (Exhibits D-1 to 6) were attached to the affidavit. The example ads were by General Tire, DuPont, Fram, Johns-Manville, Alcoa and Trailer Train.

Examples of manufacturer's ads offering Mustang automobiles as prizes or for tie-in advertising (Exhibits E-1 to 17) were attached to the affidavit. The example ads were by Ken-L Rations, Hermes, Purina, Dobbs Hats, Minute Rice, Cudahy, Listerine, Dr. Pepper, Roblee Shoes, Hudson's, General Electric and DX.

OMITTED TESTIMONY IN AFFIDAVIT OF GORDON B. MACKENZIE.

(Exhibit 316.)

Omitted from the Petitioners' Appendix was the affidavit of this witness that Respondent issues a written warranty with each Ford "Mustang" car, clearly indicating that the car originated with Ford Motor Company.

OMITTED TESTIMONY IN AFFIDAVIT OF P. E. SHARP.

(Exhibit 317.)

At the time of their introduction in April, 1964, the price for the two-door hardtop (the lowest priced "Mustang" automobile) was $1,917.78, and the suggested retail price was $2,390.50. The wholesale delivered price and suggested retail price of the highest-priced Ford "Mustang" automobile were, respectively, $3,055.47 and $3,831.50.

OMISSIONS FROM BANKRUPTCY TESTIMONY.

(Exhibit 319.)

One of the offerors for the stock of Westward in reorganization was a Mr. Hughes, a certified public accountant who had previously worked for an accounting firm in Elkhart with many clients in the mobile home field. (42-44) He had examined the assets of the corporation in preparing the proposal to be made, and the things which they considered were the assets and value of the business as a going concern, but not the name "Mustang." He stated that when he looked at the things that were of value, that he put a price tag on, he did not consider this name to be of value. (69)

Another witness, Mr. Frost, was a second accountant who had examined the books of the corporation for an investment concern which was trying to refinance the plaintiff corporation. (77-78) This analysis of the business of the corporation for the three years 1963-65 disclosed the following information, for each of the three years in question:

	1963	1964	1965
Units sold	229	319	377
Average sales price	$1,840.52	$1,863.61	$1,988.14
Materials cost per trailer	1,219.29	1,334.40	1,454.62
Factory labor cost per trailer	349.11	307.52	370.91
Overhead per trailer	333.41	284.91	321.89
Amount by which costs exceeded average sales price	61.19	63.15	159.28

The witness stated that he was appearing on behalf of Mr. Enochs, that he had been employed by Mr. Enochs after having made this study because it was apparent that Enochs had been paying somebody else for accounting services which he just wasn't getting. (79-82) When asked whether he had made any examination of the value of the claim of

the corporation against Ford, he stated that the only opinion he had ever heard anybody voice was that they didn't think it was worth ten cents. (83)

Another one of the offerors testified that in regard to the law suit, they did not want any part, not even ten percent, but that the only way they could acquire the assets of the company was to proceed by a reorganization, which was more expensive. However, they did it because Plaintiff's attorney advised that if the company were not a going concern and coaches were not being produced or made, the law suit would be jeopardized. The new management "couldn't care less about the suit that he has with Ford Motor Company. We feel it is worthless, and we are in it to make trailers, and we are not in it to make some money on a law suit." (91-92) When asked whether he had been advised as to the value of the ten percent which the corporation was to retain as the value of the law suit, he said "Our attorney thinks it is worthless." When asked whether the offerors had received any advice to the contrary, he said no, that "all four of us have different attorneys, and we have contacted our own individual attorneys, and we are not interested at all." (93)

OMITTED TESTIMONY IN AFFIDAVIT OF F. H. BIGELOW.

(Exhibit 320.)

Bigelow is the Recreation Vehicle Specialist of the Ford Division of the Ford Motor Company. The affidavit states that Ford Motor Company "does not make or sell motor homes, mobile homes, travel trailers, camper coaches to be attached to or used in conjunction with pick up trucks or any similar type of product." It likewise states that, while certain of its trucks may be converted for camping use by the user, "such converted units are not manufactured

or sold by Ford Motor Company." The testimony of this witness makes clear that "the manufacturers of such conversion units sell them to automobile dealers and consumers," and that "Ford Motor Company does not make or sell such conversion units nor does it sell vehicles converted with such units."

EXCERPTS FROM BANKRUPTCY PROCEEDINGS.

IN THE DISTRICT COURT OF THE UNITED STATES

In the Northern District of Indiana,

South Bend Division.

In the Matter of Westward Coach Manufacturing Company, Inc., Debtor.	No. 6191.

Order Allowing Amended Plan of Arrangement.

Upon the annexed Petition of Westward Coach Manufacturing Company, Inc., the above named Debtor, praying that it be granted leave to propose a modification of the Arrangement under Chapter XI of the Bankruptcy Act, proposed in the Petition of said Debtor filed on the 14th day of December, 1965, and that this Court find that said modification does not materially and adversely affect the interest of any Creditor, and that this Court adjudge that said modification is duly proposed herein, and it appearing that no notice of a Hearing on said Petition should be given, and no adverse interest having been represented, and sufficient reason appearing to me therefor, it is

Ordered that leave be, and it hereby is, granted to Westward Coach Manufacturing Company, Inc., the above named

Debtor, to propose a modification of said Arrangement so as to eliminate therefrom the provisions of Paragraph seven (7) thereof, and to provide instead in said paragraph the following:

> "It is understood that your Corporation has a lawsuit pending against Ford Motor Company; upon approval of the Arrangement, the Corporation would assign to Mr. E. Edward Enochs fifty per cent (50%) of the net amount recovered from said lawsuit; forty-five percent (45%) of the net amount would be assigned to the Trustee in Bankruptcy for the benefit of creditors of the Corporation; and five (5%) of the net amount would remain a part of the corporate assets; and Mr. Enochs will, therefore, cancel in full his note and any other notes due and owing to stockholders. The net amount recovered from said lawsuit shall be computed as the amount remaining after the deductions of all costs and expenses and fees incurred by Mr. Enochs for said lawsuit from the proceeds recovered as a result of said lawsuit. Mr. Enochs shall assume all costs, expenses and fees of said lawsuit to the extent that the amount of the proceeds recovered as a result of said lawsuit do not exceed said costs, expenses and fees. Mr. Enochs shall have full authority to settle or terminate said lawsuit. If the balances originally owed to creditors would be paid from the said assignment of the net amount recovered as a result of said lawsuit, the Trustee shall convey ten per cent (10%) of any excess of said assignment of net proceeds over the balances originally owed to the creditors to the Corporate assets and the remaining ninety per cent (90%) to Mr. Enochs. We make no assurances regarding other lawsuits wherein you are Plaintiff."

And it is hereby

Found that said modification does not materially and adversely affect the interest of any Creditor; and it is hereby

Adjudged that said modification and said arrangement as

so modified, a copy of which modified Arrangement is annexed to the annexed Petition of said Debtor, are duly proposed herein.

Dated: Jan. 28, 1966.

ROBERT A. GRANT,
Judge, United States District Court.

Assignment by Corporation.

Whereas, Westward Coach Manufacturing Co., Inc., has used the name and emblem "Mustang" as a trademark for its goods, and said trade-mark has been an intangible asset of said Westward, the value of said trade-mark being not precisely known; and

Whereas, use of the said name and emblem by Ford Motor Company has caused said Westward to assert a claim against said Ford for damages and an injunction, the value of said claim not being precisely known; and

Whereas, in pressing said claim against said Ford, said Westward Coach Manufacturing Co., Inc., has filed suit in Indianapolis, Indiana (United States District Court for the Southern District of Indiana, Indianapolis Division, Cause No. IP 65-C-199), the suit being now pending, and the value and expenses of said suit not being precisely known, and Robert A. Spray, Attorney, is serving as attorney for Westward, and for Westward's trustee specified hereinafter, in said suit, his serving as attorney being agreeable to all the undersigned; and

Whereas, either or both of E. Edward Enochs and Bernice Enochs may desire to join personally as a part or parties in said suit, this being agreeable to all the undersigned; and

Whereas, the matters involving said "Mustang" trade-

mark and said Ford are assets not having a precisely known value at the present time; and

Whereas, the nature of any recovery from Ford is not precisely known, and could relate to damages, injunction, sale or release to Ford of rights to the said name, emblem, or other property to Ford or any affiliate thereof, the value of the total of all the above, whether by settlement or judgment or otherwise, and regardless of how or to whom the recovery is designated, being agreed by all the undersigned as benefit of the Ford matter; and

Whereas, said Westward is now undergoing bankruptcy proceedings at the present time, in the United States District Court, Northern District of Indiana, South Bend Division, Bankruptcy No. 6191; the trustee being Ray Grainger, and there are not sufficient funds of said Westward to pay all claims of creditors, and a Plan of Arrangement has been confirmed in said bankruptcy; and

Whereas, the said E. Edward Enochs and Bernice Enochs surrenders hereby any and all claims he or she or they may have for monies due them or either of them from Westward; and

Whereas, this Assignment by Corporation is a part of said Plan of Arrangement;

All the Undersigned Do Agree as Follows:

1. Westward Coach Mfg. Co., Inc., hereby assigns the net recovery of any benefit of the Ford matter as follows: Forty-five (45%) percent to the trustee for the benefit of creditors of said Westward and Fifty (50%) percent to E. Edward Enochs and Bernice Enochs, Pursuant to Par. 7 of the Amended Plan of Arrangement, Bankruptcy #6191, Dist. Ct. of the U. S. Northern District of Indiana, South Bend Div.

2. Net recovery means the value of any benefit of the Ford matter, after subtracting attorney fees, and after

subtracting expenses of said Ford matter, all such expenses being reimbursed to the person or persons who paid the same.

WESTWARD COACH MANUFACTURING CO., INC.
By PHILIP F. KERDAISH,
Its President.

Attest
By LA MAR E. HUGHES,
Its Secretary.

WESTWARD COACH MANUFACTURING CO., INC.
(Debtor)
By RAY GRAINGER, *Trustee,*
E. EDWARD ENOCHS,
BERNICE ENOCHS.

Exhibit E.

IN THE DISTRICT COURT OF THE UNITED STATES.

In the Northern District of Indiana,

South Bend Division.

In the Matter of Westward Coach Manufacturing Company, Inc., *Debtor.*	In Proceedings for an Arrangement No. 6191.

Arrangement.

That Westward Manufacturing Company, Inc., the above named debtor, has received and accepted the following offer of purchase and arrangement which it proposes for its unsecured creditors:

1. That proceedings through your Attorney be taken immediately to proceed under Section 321, Chapter XI of the Bankruptcy Act, such proceeding to be filed on or about

December 17, 1965, with a Trustee to be appointed as may be selected by your Attorney.

2. The Purchasers would propose to pay in full all Secured Creditors of the Corporation and all debts having priority under Section 64(a) of the Bankruptcy Act, and to pay unsecured Creditors of the Corporation fifteen per cent (15%) of the face amount of their filed claims.

3. That administrative salaries of the Corporation be terminated as of the day of filing a Petition under Chapter XI of the Bankruptcy Act, leaving as employees Mrs. Larrabee, the factory superintendent and two production employees.

4. That this Plan be subject to the ability of the proposed Purchasers to make an arrangement with Mr. Dee Moody, legal owner of the real estate leased by the Corporation, to acquire the Purchase Agreement wherein your stockholder, Mr. E. Edward Enochs, is purchasing said real estate, subject to the payment to Mr. Enochs of Seven Thousand Five Hundred Dollars ($7,500), with real estate taxes to be prorated as of date of final approval of the Plan of Arrangement, which taxes shall be deducted from said purchase price of $7,500.00, together with One Thousand Forty-Five and 85/100 Dollars ($1,045.85) owed by Mr. Enochs to Mr. Moody and any delinquencies in said real estate purchase payments. In addition, Mr. Enochs would agree not to enter into competition with the Corporation as a stockholder or owner, directly or indirectly, in the manufacture of travel trailers for a period of one (1) year from date of final approval of the Plan.

5. The Purchasers would propose to place in escrow, at the bank of your choice, the sum of Twenty-Three Thousand Dollars ($23,000.00), to guarantee its bona fides with reference to this Plan of Arrangement, said sum to be returned to Purchasers in event this Plan is not approved.

6. The Purchasers would propose to pay all expenses of administration as may be allowed or approved by the Court, in cash, in full upon confirmation of the Arrangement by the deposit for this purpose not to exceed the sum of Five Thousand Dollars ($5,000.00).

7. It is understood that your Corporation has a lawsuit pending against Ford Motor Company; upon approval of the Arrangement, the Corporation would assign to Mr. E. Edward Enochs fifty per cent (50%) of the net amount recovered from said lawsuit; forty-five per cent (45%) of the net amount would be assigned to the Trustee in Bankruptcy for the benefit of creditors of the Corporation; and five per cent (5%) of the net amount would remain a part of the corporate assets; and Mr. Enochs will, therefore, cancel in full his note and any other notes due and owing to stockholders. The net amount recovered from said lawsuit shall be computed as the amount remaining after the deductions of all costs, expenses and fees incurred by Mr. Enochs for said lawsuit from the proceeds recovered as a result of said lawsuit. Mr. Enochs shall assume all costs, expenses and fees of said lawsuit to the extent that the amount of the proceeds recovered as a result of said lawsuit do not exceed said costs, expenses and fees. Mr. Enochs shall have full authority to settle or terminate said lawsuit. If the balances originally owed to creditors would be paid from the said assignment of the net amount recovered as a result of said lawsuit, the Trustee shall convey ten per cent (10%) of any excess of said assignment of net proceeds over the balances originally owed to the creditors to the corporate assets, and the remaining ninety per cent (90%) to Mr. Enochs. We make no assurance regarding other lawsuits wherein you are Plaintiff.

8. All the stock of said Corporation will further be delivered to said Escrow Agent properly endorsed in blank, with signatures thereon guaranteed, conditioned upon de-

livering to Purchasers upon final confirmation of the Plan. Your stockholders and directors will take all actions necessary to implement the proceedings herein, to warrant the ownership of stock, and to cooperate with the Purchasers and the Court in orderly disposition of the matters herein.

9. Until final approval Purchasers may desire, at their own expense, to use finished inventory for demonstration, and that to the extent possible, this will be done.

10. Purchasers will assume all debts incurred in the ordinary course of business after the filing of the Plan of Arrangements, subject to final approval of the Plan.

11. Purchasers retain the option to withdraw its offer in this proposed Plan if the financial statement is materially different from that represented by you to the Purchasers, if the unsecured Accounts Payable exceed One Hundred Fifty-Three Thousand Dollars ($153,000.00) approved as claims, or if the Plan is not finally approved within sixty (60) days of filing, and may accordingly withdraw all funds deposited.

12. It is understood some of the conditions may be changed by order of the Court as to your undertakings herein with reference to the business operation after filing, and to such extent you are relieved from compliance.

13. That the Court retain jurisdiction until all the provisions of the Arrangement have been performed.

Dated, January 21, 1966.

WESTWARD COACH MANUFACTURING COMPANY, INC.,
BY DEDARIO & KATZ,
BERNARD KATZ,
Attorney for Bankrupt.

Purchasers: LaMar Hughes, James Wellington, Philip Keidaish, Thomas Tuttle.

BY JOHN D. ULMER,
Attorney for Purchasers.

SUMMARY OF TRADEMARK REGISTRATIONS DEPICTING A HORSE.

The depiction of a horse has been federally registered as a trademark at least 250 times for all manner of products. The vast majority of such registrations were prior to Westward's Indiana registration. (Exs. 2-305.)

The depiction of a horse with the name "Mustang" was registered federally by various persons for a variety of products at least eleven times before Westward's Indiana registration of the mark for its products. (Exs. 2, 4, 7, 9, 12, 16, 19, 21, 22, 26 and 54) The depiction of a horse with the names "Pinto," "Bronco," "Stallion" and "Colt" was federally registered by various persons for a variety of products before Westward's adoption of the names. (Exs. 56, 57, 58, 59, 60, 61 and 62)

ENTRY FOR APRIL 29, 1966.

(R. 299-301.)

At the hearing on Defendant's Motion for Summary Judgment set for April 29, 1966, Plaintiff was given further time to file material in opposition, and a briefing schedule was established. The issue to be presented by the motion was also agreed upon, as follows:

> "Plaintiffs and Defendant agreed that the Motion for Summary Judgment presented substantive questions of law in the area of trademarks, tradenames and unfair competition."

COUNTERCLAIM.

The Ford Motor Company had filed a counterclaim in the action in the District Court before the Summary Judgment was sought on the complaint. The counterclaim is still pending. After the issuance of the federal registration to Westward, a supplemental counterclaim was filed on March 20, 1968. It is:

SUPPLEMENTAL COUNTERCLAIM.

Comes now the Defendant Ford Motor Company, pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, and files this supplemental counterclaim setting forth occurrences and events which have transpired subsequent to the date its counterclaim was filed herein on November 4, 1965, and alleges as follows:

9. On July 29, 1966, this Court granted the Defendant's motion for summary judgment upon the claims and issues presented by Plaintiffs' complaint and Defendant's answer thereto. On October 5, 1966, the Court denied the Plaintiffs' motion to alter or amend such judgment.

10. On January 9, 1968, the United States Court of Appeals for the Seventh Circuit affirmed the judgment of this Court, and subsequently denied a rehearing thereon.

11. On September 5, 1967, the United States Patent Office issued trademark registration number 834,606 to the Counterdefendant Westward Coach Manufacturing Company, Inc., for the trademark of the word "Mustang" in combination with the design of a leaping or charging horse. The application for registration alleged that the mark was used upon the following goods:

> "Utility van bodies mountable on pick-up trucks and small trucks for providing trailer-type housing and

storage accommodations for travellers and sportsmen, coach bodies known as campers for providing such accommodation and mountable on an associated vehicle or carrying unit such as a truck or boat unit such as a pontoon frame, and trailers, in Class 19."

Upon the appeal and in connection upon the request for rehearing the Counterdefendant Westward Coach Manufacturing, Inc. charged that it was entitled to protection and relief upon the recently granted federal registration.

12. In order to afford full and complete relief between the parties with respect to the asserted trademark rights of Counterdefendant, and to avoid unnecessary further litigation and irreparable injury to Counterclaimant, this Court should enter its judgment in the form heretofore requested, finding and declaring expressly the right of the Counterclaimant to the continued use of the term and designation "MUSTANG" and the representation of a horse separately or in combination, upon and in connection with the sale and advertising for sale of its automobile without being in violation of any right of the Counterdefendant.

WHEREFORE, the Counterclaimant respectfully prays for the entry of a judgment against Counterdefendant as originally requested, together with such further general and different relief as the facts alleged herein and the nature of the case may require, and as to the Court appears proper, and that Counterclaimant recover its costs.

Westward has requested an extension of time to respond to the counterclaim.

SUMMARY OF "MUSTANG" TRADEMARK REGISTRATIONS.

A book of registrations of the name "Mustang" and the depiction of a horse is a part of the record on the motion for summary judgment. (Exs. 2-305.) The registrations contained show that the name "Mustang", alone or in combination with the depiction of a horse, was in the Patent Office twenty-six times before it was adopted by Westward. One of the registrations was for trailers. Westward's registration was held up until Westward secured the cancellation of this prior registration for trailers on the grounds of abandonment. One of the other registrations of the name prior to Westward's adoption was by White Motor Company which opposed Westward's registration. After the adoption of the name by Westward, the name "Mustang", alone or in combination with the depiction of a horse, was registered twelve additional times, and registration had been sought by eighteen companies after Ford's adoption of the name. The products covered by these applications and registrations of "Mustang" were of a wide variety.

The depiction of a horse in a trademark registration has been registered at least two hundred and fifty times in connection with such names as "Mustang," "Palomino," "Pinto," "Bronco," and many others.

OMITTED TESTIMONY IN AFFIDAVIT OF R. E. DIKEMAN.

(Exhibit 318.)

R. E. Dikeman is an account executive of R. L. Polk and Co., which compiles statistics relating to vehicle registrations. The affidavit sets forth, by state, registrations of the Ford Mustang automobile for each month during the period April 1964 through September 1965. Registrations were made in every one of the fifty states, and totaled 645,416 during this eighteen month period.